

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
<i>Plaintiff,</i>)	
)	
v.)	The Honorable James T. Giles,
)	Chief Judge
UNION CORPORATION et al.)	
<i>Defendants</i>)	Civil Action No. 80-1589
)	
v.)	
)	
CONSOLIDATED EDISON COMPANY)	
OF NEW YORK et al.)	
<i>Third Party Defendants</i>)	
)	
)	
)	

**CONSENT DECREE FOR SETTLEMENT OF CLAIMS INVOLVING
DEFENDANT JOHN B. SCHORSCH**

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<p>UNITED STATES OF AMERICA, <i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>UNION CORPORATION et al. <i>Defendants</i></p> <p style="text-align: center;">v.</p> <p>CONSOLIDATED EDISON COMPANY OF NEW YORK et al. <i>Third Party Defendants</i></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>The Honorable James T. Giles, Chief Judge</p> <p>Civil Action No. 80-1589</p>
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**CONSENT DECREE FOR SETTLEMENT OF CLAIMS INVOLVING
DEFENDANT JOHN B. SCHORSCH**

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in 1980 against the Union Corporation and U.C.O.-M.B.A., Inc. ("Metal Bank") (known collectively as "the Corporate Defendants") and Irvin Schorsch and John Schorsch. The complaint as amended asserted claims in this matter pursuant to Section 7003 of the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6973, and Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607.

B. The United States in its complaint seeks, inter alia, (1) reimbursement of costs incurred by EPA and the U.S. Department of Justice for response actions at the Metal Bank Cottman Avenue Superfund Site ("Site"), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site to abate an imminent and substantial endangerment to health or the environment consistent with the Resources Conservation

Recovery Act, 42 U.S.C. § 2901 et seq., and the National Contingency Plan, 40 C.F.R. Part 300 (as amended)("NCP").

C. Following a bench trial in August and September 2002, the Court determined that the four named defendants – Union Corporation, Metal Bank, Irvin G. Schorsch Jr. and John B. Schorsch -- are responsible parties within the meaning of CERCLA § 107(a) and RCRA § 7003, and that the Site may present an imminent and substantial endangerment to human health or the environment under RCRA § 7003. The Court subsequently ordered additional investigations to better define the nature and scope of contamination at the Site and set a trial date of November 1, 2004, to determine the appropriate remedy.

D. The Corporate Defendants filed a consolidated Chapter 11 bankruptcy action in the United States Bankruptcy Court for the Eastern District of Missouri in May 2003. The Corporate Defendants agreed to a settlement which established, among other things, a substantial funding mechanism for the future remedy at the Site providing for ultimate payment of up to \$13.235 million into a newly created Four Sites Settlement Trust. A copy of the Settlement Agreement Respecting Environmental Objections to Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, *In the Matter of Union Financial Services Group, Inc., et al.* (United States Bankruptcy Court for the Eastern District of Missouri, Case Number 03-45870-399), is attached hereto as Appendix G. The Corporate Defendants ceased to exist on the effective date of the reorganization in the bankruptcy action.

E. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay the response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant is able to pay the amounts specified in Section VI.

F. The Parties agree and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

G. Settling Defendant does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 6973, 9606, 9607 and 9613(b), and also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that he may have to

jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or any of the other Companion Consent Decrees or this Court's jurisdiction to enter and enforce any of the Companion Consent Decrees.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, Settling Defendant, and his heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

"Certification of Completion of the Remedial Action" shall mean certification by EPA that the Remedial Action has been performed in accordance with the Utility Group Consent Decree and that the Performance Standards have been achieved.

"Companion Consent Decrees" shall mean the three consent decrees related to the Site lodged contemporaneously, consisting of the "Utility Group Consent Decree," the "Irvin G. Schorsch Jr. Consent Decree" and the "John B. Schorsch Consent Decree."

"Consent Decree" shall mean this consent decree and all appendices attached hereto. In the event of conflict between this consent decree and any appendix, this consent decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

"Financial Information" shall mean those financial documents submitted by Settling Defendant and identified in Appendix F.

"Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for Interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1 of each year.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the Settling Defendant, and the Utility Group.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Remedial Action" shall mean those activities to be undertaken by the Utility Group to implement the Revised Final Design pursuant to the Utility Group Consent Decree, not including Operation and Maintenance that takes place after certification of completion of the Remedial Action.

"Revised Final Design" shall mean the final specifications, approved by EPA, for implementing the Remedial Action. The Revised Final Design shall consist of the Final Design (Appendix B) as modified by the Revised Remedial Plan (Appendix C).

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean Defendant John B. Schorsch.

"Site" shall mean the Metal Bank Cottman Avenue Superfund Site, located at 7301 and 7333 Milnor Street, at the intersection of Cottman Avenue and fronting on the Delaware River in the city of Philadelphia, Pennsylvania, and designated portions of its environs, including the adjacent contaminated portions of the Delaware River and mudflats, as generally shown on the Site map included in Appendix A.

"United States" shall mean the United States of America, including its

departments, agencies and instrumentalities.

"Utility Group" shall mean Baltimore Gas and Electric Company, Consolidated Edison Company of New York, Inc., Jersey Central Power & Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, PECO Energy Company, Potomac Electric Power Company, PP&L Electric Utilities Corporation, Public Service Electric and Gas Company, and Virginia Electric and Power Company.

V. OBJECTIVE OF THE PARTIES

4. The mutual objective of the Parties in entering into this Consent Decree is (1) for Settling Defendant to make a cash payment to address his liability for the Site as provided in the Covenant Not to Sue by Plaintiff and by the Utility Group in Section VIII, subject to the Reservations of Rights by United States in Section IX, and (2) for the Utility Group or others to perform the remedy.

VI. PAYMENT OF RESPONSE COSTS

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay \$50,000.00 to the EPA and \$550,000.00 to the Utility Group.

6. Payment

a. Payment to EPA shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1987V00255, EPA Site Spill No. 0305, and DOJ number 90-11-2-1183A. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. Payment to the Utility Group shall be made by wire transfer to an account to be established at an institution which will be identified in writing by the Utility Group in the name of the "Cottman Avenue PRP Group" with Hunton & Williams LLP as the account agent.

c. EPA and the Utility Group shall acknowledge receiving payments in writing to Settling Defendant within 10 days of receipt.

7. Documentation

a. At the time of payment to EPA, Settling Defendant shall send copies of documentation of the wire transfer to

Regional Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to Barbara Borden (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

b. At the time of payment to the Utility Group, Settling Defendant shall send copies of documentation of the wire transfer to

Cottman Avenue PRP Group
c/o Susan Terrell
Hunton & Williams LLP
951 East Byrd Street
Richmond, VA 23219.

8. The total amount to be paid to EPA pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substances Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest shall accrue on the unpaid balance through the date of payment at an annual rate of 12%.

10. Stipulated Penalty.

a. If any amount due to EPA under Paragraph 5 is not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$250 per violation per day that such payment is late, in addition to the Interest required by Paragraph 9.

b. Any stipulated penalty is due and payable within 30 days of the date of the demand for payment of the penalty by EPA. Any payment to EPA under this Paragraph shall be identified as a "stipulated penalty" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and EPA Site Spill No. 0305, and DOJ number 90-11-2-1183A, and shall be sent to:

U.S. EPA Region III
P.O. Box 360515

Pittsburgh, PA 15251-6515.

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to

Regional Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. Liquidated Damages

a. If any amount due to the Utility Group under Paragraph 5 is not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay to the Utility Group, as liquidated damages, \$250 per violation per day, in addition to the interest required by Paragraph 9.

b. Liquidated damages are due and payable within 30 days of the date of the demand for payment by the Utility Group. All payments to the Utilities under this Paragraph shall be identified as "liquidated damages" and shall be made by certified or cashier's check made payable to "Hunton & Williams LLP." The check, or a letter accompanying the check, shall reference the name and address of the party making payment and the Site name and shall be sent to:

Cottman Avenue PRP Group
c/o Susan Terrell
Hunton & Williams LLP
951 East Byrd Street
Richmond, Virginia 23219.

c. Liquidated damages shall accrue as provided in this Paragraph regardless of whether the Utility Group has made a demand for payment, but need only be paid upon demand. All liquidated damages shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

12. If the United States brings an action to enforce this Consent Decree and is the prevailing party in the enforcement action, Settling Defendant shall reimburse the United States

for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff and the Utility Group by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF AND BY THE UTILITY GROUP

15. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of the payment required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information is subsequently determined by EPA to be false or inaccurate in any material respect, EPA may seek an order of the Court providing that Settling Defendant shall be deemed to have forfeited all payments made pursuant to this Consent Decree and this covenant not to sue (Paragraphs 15 and 16) and the contribution protection (Paragraph 25) shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's materially false or inaccurate information. It is provided, however, that Settling Defendant's payments shall be credited against his ultimate liability if the United States should seek further relief. Notwithstanding the foregoing, nothing contained herein shall be deemed a waiver of Settling Defendant's right to have the Court review and finally resolve the issue of whether Settling Defendant's Financial Information was false or inaccurate in any material respect. This covenant not to sue extends only to (a) Settling Defendant; (b) his wife, Joan Schorsch, solely to the extent of loan repayments to her by Settling Defendant to the extent disclosed in the Financial Information provided to EPA; (c) his step-son, Clifford Diamond, solely with respect to gifts from Settling Defendant to the extent disclosed in the Financial Information provided to EPA; and (d) his mother, Iras G. Stern, solely with respect to payments made to her or for her health care and related costs and expenses. This covenant not to sue does not extend to any other person.

16. Covenant not to sue by the Utility Group. Except as specifically provided in Section

IX (Reservation of Rights by United States),, the Utility Group covenants not to sue Settling Defendant pursuant to Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613(f) and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by the Utilities of the payment required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue extends only to (a) Settling Defendant; (b) his wife, Joan Schorsch, solely to the extent of loan repayments to her by Settling Defendant to the extent disclosed in the Financial Information provided to EPA; (c) his step-son, Clifford Diamond, solely with respect to gifts from Settling Defendant to the extent disclosed in the Financial Information provided to EPA; and (d) his mother, Iras G. Stern, solely with respect to payments made to her or for her health care and related costs and expenses. This covenant not to sue does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

17. United States Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response

if, prior to Certification of Completion of the Remedial Action, the Court determines *sua sponte* or on motion that

(1) conditions at the Site, previously unknown to EPA, have been discovered, or information, previously unknown to EPA, has been received, in whole or in part, and

(2) these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action would not be protective of human health or the environment, and

(3) there has been a change in Settling Defendant's financial situation which has materially increased his ability to pay response costs.

18. United States Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response

if, subsequent to Certification of Completion of the Remedial Action, the Court determines *sua sponte* or on motion that

(1) conditions at the Site, previously unknown to EPA, have been discovered, or information, previously unknown to EPA, has been received, in whole or in part, and

(2) these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action would not be protective of human health or the environment, and

(3) there has been a change in Settling Defendant's financial situation which has materially increased his ability to pay response costs.

19. For purposes of Paragraph 17, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date this Consent Decree is entered and contained in EPA's Site file. For purposes of Paragraph 18, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action.

20. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 15. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, occurring after the signing of this Consent Decree by Settling Defendant; and

e. liability arising from the past, present, or future disposal, release or threat of

release of a hazardous substance, pollutant, or contaminant outside of the Site.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANT

21. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §2901 *et seq.*, and Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 23 (Waiver of Claims) and Paragraph 27 (Waiver of Defenses), this covenant not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20 (c) - (e), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

23. Waiver of Claims. Settling Defendant agrees to withdraw and never again assert any claims or causes of action arising under RCRA, CERCLA, common law or any other legal or equitable doctrine that he may have for all matters relating to the Site, including for contribution, against any other person or party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. Except as provided in Paragraph 23, and as otherwise specifically set forth in the Agreement, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 23, and as otherwise specifically set forth in the Agreement, the Parties expressly reserve any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

26. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. Waiver of Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XII. CERTIFICATION AS TO RECORDS

28. Settling Defendant hereby represents that he has not, since the termination of his employment by The Metal Bank or Union Corp. in 1975, has had under his possession or control any records (including documents, reports and other records and all information recorded in electronic format) that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site.

29. Settling Defendant hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information – other than identical copies – relating to his potential

liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against him regarding the Site and that he has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

U.S. Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-2-1183A

U.S. Environmental Protection Agency

John J. Monsees (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Linda R. Dietz (3HS21)
Remedial Project Manager
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendant:

John Schorsch
551 East 86th Street
New York, NY 10028

-with copies to:

Andrew B. Eckstein, Esq.
Blank Rome LLP
405 Lexington Avenue
New York, New York 10174

-and-

John Mattioni, Esq.
Mattioni Ltd.
399 Market Street
Philadelphia, PA 19106

As to the Utility Group:

Jeffrey N. Martin
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006

XIV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. APPENDICES

33. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" – Record of Decision for the Site.

"Appendix B" – Final Design Report.

"Appendix C" – Revised Remedial Plan.

"Appendix D" – List of Settling Defendants.

"Appendix E" – Draft easement.

"Appendix F" – List of financial documents submitted by settling defendant John B. Schorsch in connection with the John B. Schorsch Consent Decree.

"Appendix G" – Settlement Agreement Respecting Environmental Objections to Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, *In the Matter of Union Financial Services Group, Inc., et al.* (United States Bankruptcy Court for the Eastern District of Missouri, Case Number 03-45870-399).

"Appendix H" – Agreement with the City of Philadelphia.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree and the other two Companion Consent Decrees shall be lodged with the Court for a period of not less than 30 days for public notice and comment. An opportunity for a public meeting in the affected area will also be provided, pursuant to Section 7003(d) of RCRA. The United States reserves the right to withdraw or withhold its consent to any of the Companion Consent Decrees if comments received in response to the notice or at any public meeting held pursuant to RCRA § 7003 disclose facts or considerations that indicate that any of the Companion Consent Decrees is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of all three Companion Consent Decrees without further notice.

35. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. COMPANION CONSENT DECREES

36. The three Companion Consent Decrees are all part of one global settlement. If the Court declines to enter one or more Companion Consent Decrees, the United States and the Utility Group shall have 30 days in which either may elect to withdraw or withhold consent for the remaining Companion Consent Decrees.

XVIII. SIGNATORIES/SERVICE

37. The undersigned representative of Settling Defendant to this Consent Decree, the undersigned representative of the Utility Group (on behalf of all the members of the Utility Group), and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Settling Defendant hereby agrees not to oppose entry by the Court of any of the Companion Consent Decrees or to challenge any provision of any of the Companion Consent Decrees, unless the United States has notified Settling Defendant in writing that it no longer supports entry of this Consent Decree.

39. Settling Defendant shall identify, on the attached signature page, the name and

address of an agent who is authorized to accept service of process by mail on his behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

40. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree and the other Companion Consent Decrees. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the Utility Group, and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2005.

Honorable James T. Giles
Chief Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 8/15/05

KELLY JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


Date: July 21, 2005

ERIC G. WILLIAMS
CATHERINE MALININ DUNN
Trial Attorneys
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

Respectfully submitted,


Date: 8-29-05


PATRICK L. MEEHAN
United States Attorney

Date: 8/29/05


VIRGINIA A. GIBSON
Chief, Civil Division

Date: 8-29-05


NURIYE C. UYGUR
Assistant United States Attorney
Office of the United States Attorney
Eastern Division of Pennsylvania
615 Chestnut Street – Room 1250
Philadelphia, PA 19106

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

Date: 7/14/05

DONALD S. WELSH
Regional Administrator

Date: 6/20/05

WILLIAM C. EARLY
Regional Counsel

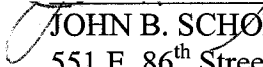
Date: 6/14/05

JOHN J. MONSEES
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

DEFENDANT JOHN B. SCHORSCH

Date: July 11, 2005



JOHN B. SCHORSCH
551 E. 86th Street
New York, NY 10028

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

FOR THE UTILITY GROUP:

BALTIMORE GAS AND ELECTRIC COMPANY
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.
JERSEY CENTRAL POWER & LIGHT COMPANY
LONG ISLAND LIGHTING COMPANY d/b/a LIPA
METROPOLITAN EDISON COMPANY
ORANGE AND ROCKLAND UTILITIES
PECO ENERGY COMPANY
POTOMAC ELECTRIC POWER COMPANY
PP&L ELECTRIC UTILITIES CORPORATION
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
VIRGINIA ELECTRIC AND POWER COMPANY

By their Attorneys:

Date: July 6, 2005

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